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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1206 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE K.J.VAIDYA

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1. Whether Reporters of Local Papers may be allowed to see the judgements ? YES

2. To be referred to the Reporter or not ? YES

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3. Whether Their Lordships wish to see the fair copy of the judgement? NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder ? NO

5. Whether it is to be circulated to the Civil Judge ? YES

STATE OF GUJARAT

Versus

SUDHIR MEHTA, MANAGER MILTON PVT.LTD. GANDHIDHAM.

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MR.K.C.SHAH, APP for the appellant.
MR.K.A.PUNJ, advocate for the respondent.

CORAM : MR.JUSTICE K.J.VAIDYA

Date of decision: 24/01/97

ORAL JUDGEMENT

Here is a case which demonstrates how indeed the Legislative letter, spirit, intent and the object underlying the Factory Act, 1948 can be flouted and thrown to the winds to the greatest disadvantage of helpless workers and that too not only by the employer, but also by the learned Magistrate who disposed of the case in the most unbecoming and chevalier fashion ridiculing the labour justice !! These observations stand unquestionably necessitated in the nausiating background of the facts-situation narrated hereunder :

2. According to Mr. S.A. Solanki, the Factory Inspector, Adipur-Kutch, when he visited the factory of 'Milton Pvt. Ltd.' at Gandhidham, on 21-9-1985, he noticed that there were 1083 women workers working therein, out of which, some had small children below the age of 6 years. According to the Factory Inspector, at the relevant time, one Shri Sudhir Mehta was the Manager of the said 'Milton Pvt. Ltd.', which had contravened the provisions contained in sections 48(1) and 102 (2) of the Factories Act, 1948 (for short "The Act") in as much as the women workers were not provided with and maintained a suitable room viz. 'Creches' (Ghodiaghar) for the use of their children under the age of 6 years. Further according to the Factory Inspector, infact the room in the said factory which was shown as 'Ghodiaghar' was stored with cup-board, cotton waste and some other such things as a result of which it could not be used for the purpose it was meant for. Not only that, but according to the Factory Inspector, previously also, for contravening the very same provisions viz. section 48(1) of the Act, the respondent was tried by the learned Magistrate in a case registered as Criminal Case No. 178/85, wherein on his pleading guilty, was convicted for the same and sentenced under section 92 of the Act to pay a fine of Rs. 150/= only, and in default, to undergo SI for 7 days. Further, under section 102(1) of the Act, the learned Magistrate also directed the respondent to provide 'Ghodiaghar' within 30 days from the date of the said order and to inform the Factory Inspector regarding compliance of the same.. Despite this specific direction given by the court, the respondent failed to comply with the same for 210 days and thereby committed further offence punishable under section 102 (2) of the Act. On the basis of these allegations, the Factory Inspector ultimately filed a complaint on 7-12-1985 before the

learned Magistrate, wherein on the respondent once again pleading guilty on 4-8-1986 came to be convicted and sentenced for the same and sentenced to pay a fine of Rs. 150/- only, giving rise to the present appeal for the enhancement of sentence.

3. Having heard Mr. K.C Shah, the learned APP and Mr. K.A Punj, the learned advocate for the respondent, at the very outset, it is required to be stated that there is not even a slightest of the doubt that the impugned order of sentence is not only unduly lenient, manifestly unjust, ridiculous and perverse, but rather the same is cruel joke on the labour welfare legislation and also undermining the overall image of the judiciary. Look at the imposition of paltry amount of fleabite composite fine of Rs. 150/= for non-compliance of Courts earlier order for 210 days in a gross case wherein by virtue of section 102 (2) of the Act, the learned Magistrate was expected to impose a sentence of imprisonment upto 6 months and/or fine upto Rs. 100/for each day of noncompliance with Court's earlier order!! It is simply difficult to withstand such palpably perverse and illegal order of the sentence ! Such orders to say the least are nothing but meriting the certificate of 'unbecoming' and 'the judicial misconduct' to be strictly and straighway departmentally dealt with ! with further necessary order of keeping the copy of the impugned judgment in the Confidential file of the concerned learned Magistrate/Judge as the case may be. At this stage, it will indeed be not out of place to direct all the learned District & Sessions Judges of the State to take immediate notice of these observations and taking surprise inspection of the labour cases launch appropriate action against the concerned defaulting Magistrates by bringing it to the notice of the Hon'ble Chief Justice of High Court.

4. With a view to properly assess the gravity and seriousness of offence as well as to what ought to have been and what now exactly deserves to be the appropriate order of sentence for the commission of the alleged offences punishable under section 48 read with section 102 (2) of the Act, it is indeed necessary first of all to have a look at the said two relevant sections rules made under Rule 48 (3) viz. Gujarat Factories Rules, 1963 pertaining to 'Chreches.' Accordingly, sections 48 and 102 reads as under :

48. Creches - (1) In every factory wherein more than {thirty women workers} are ordinarily employed

there shall be provided and maintained a suitable room or rooms for the use of children under the age of six years of such women.

(2) Such rooms shall provide adequate accommodation, shall be adequately lighted and ventilated, shall be maintained in a clean and sanitary condition and shall be under the charge of women trained in the care of children and infants.

(3) The State Government may make rules -

(a) prescribed the location and the standards in respect of construction, accommodation, furniture and other equipment of rooms to be provided under this section;

(b) requiring the provision in factories to which this section applies of additional facilities for the care of children belonging to women workers, including suitable provision of facilities for washing and changing their clothing;

(c) requiring the provisions in any factory of free milk or refreshment or both for such children;

(d) requiring that facilities shall be given in any factory for the mothers of such children to feed them at the necessary intervals."

Rule 80 : Creches - (1) Rule 80 to 83-A shall come into force in respect of any class or description of factories, on such dates as the State Government may, by notification in the Official Gazette appoint in this behalf.

(2) The creche shall be conveniently accessible to the mothers of the children accommodated therein and so far as is reasonably and practicable it shall not be situated in close proximity to any part of the factory where obnoxius fumes, dust or odours are given off or in which

excessively noise processes are carried on.

(3) The building in which the creche is situated shall be soundly constructed and all the walls and roof shall be of suitable heat resisting materials and shall be water-proof. The floor and internal walls of the creche shall be so laid or finished as to provide a smooth impervious surface.

(4) The height of the rooms in the building shall be not less than 3.7 metres from the floor to the lowest part of the roof and there shall be not less than 11.9 square meters of floor area for each child to be accommodated.

Provided that in the case of rooms in buildings in existence at the date of the coming into force of this rule which have been or are intended to be adopted for use as a creche, the Chief Inspector may approve the rooms having such reduced height as may in his opinion be reasonable in the circumstances of the case on such conditions as may be deemed expedient.

(5) Effective and suitable provision shall be made in every part of the creche for securing and maintaining adequate ventilation by the circulation of fresh air.

(6) The creche shall be adequately furnished and equipped and in particular there shall be one suitable cot or credle with the necessary bedding for each child provided that for children over twoyears of age, it will be sufficient if suitable beddings made available and atleast one chair or equivalent seating accommodation for the use of each mother while she is feeding or attending to her child, and a sufficient supply of suitable toys for the older children.

(7) A suitably fenced and shadyt open air play-ground shall be provided for the

older children, provided that the Chief Inspector may by order in writing, exempt any factory from compliance with this sub-rule if he is satisfied that there is no sufficient space available for the provisions of such a play ground.

Rule 83-A : Qualifications of a woman incharge : (1) Except as provided in sub-rule (2) no woman shall be appointed under rule 83 as a woman incharge of a creche after the 1st June 1952 unless she possesses the Bombay Provincial Nurses' Council's Mid-wifery qualification or produces a certificate that she has undergone training for a period of not less than 18 months in a hospital, maternity home or nursing home approved in this behalf by the Chief Inspector of Factories, or produces a certificate that she has receivede training for a pre-primary teacher in an institution approved by the State Government.

102. Powers of Court to make orders - (1) Where the occupier or manager of a factory is convicted for an offence punishable under this Act the Court may, in addition to awarding any punishment, by order in writing require him, within a period specified in the order (which the Court may, if it thinks fit and on application in such behalf, from time to time extend) to take such measures as may be so specified for remedying the matters in respect of which the offence was committed.

(2) Where an order is made under sub-section (1), the occupier or manager of the factory, as the case may be, shall not be liable under this Act in respect of the continuation of the offence during the period or extended period, if any, allowed by the Court, but if, on expiry of such period or extended period, as the case may be, the order of the Court has not been fully complied with, the occupier or manager, as the case may be, shall be deemed to have committed a further offence, and may be sentenced therefor by the Court to undergo imprisonment for a term which may extend to six months or to pay a fine which may extend to one hundred rupees for every

day after such expiry on which the order has not been complied with, or both to undergo such imprisonment and to pay such fine, as aforesaid."

5. The overall comprehensive view which one gathers from reading the aforesaid provisions under the Act and the Rules made thereunder, (which for the reasons best known to the learned Magistrate have been conveniently ignored making mockery of justice !!?), the same clearly demonstrate how the Legislature in order to protect the welfare and the interests of poor, helpless working women, has made special provision for Creches (Ghodiaghar) under sections 48 and 102 of the Act and the relevant Rules made thereunder. This was indeed necessary as we all know that because of very many reasons the women workers had to carry their young children alongwith them far away from their respective homes at the factory where they are working and accordingly in absence of 'Ghodiaghar', these children were either left in open or at some unsuitable places exposed to all sorts of noises, smokes, air pollution, heat, danger of moving machineries, dust and sometimes even to the leakages of quite harmful gases, as a result of which no year passes without certain number of serious and minor accidents and sometimes even deaths taking place. It was precisely for these special reasons that the provision as contained in sections 48 & 102 came to be engrafted in the Act, whereby the poor helpless working women struggling for their day-today existence and accordingly in constant search of bread and butter had to go with their children below six years age, to see that they are not exploited to the extent of disadvantage of putting their children at the mercy of the fate ! It is good that the Parliament has made a provision for providing Chreches'Ghodiaghar'. But even otherwise, on the humanitarian ground also, even if there was no such Legislative provision, it is indeed the duty of the Factory owners to take care of the minor children of the women workers. Mind-well, law comes into picture only, only and only when some members of the society on their part,forget on the one hand their moral duty to fellow citizens and on the other hand start turning quite inhuman and beastly exploiting and devouring rights of others ! Infact, it is indeed difficult to imagine and thereby appreciate as to what indeed could be the plight of some helpless children of the helpless working women with sky above and earth below admist as stated above the varying seasonal hostilities of Summer, Winter and Monsoon coupled with the incidental hazardous fall out of the noise, smokes, dust, fire, gas-leakages and such

other eventualities in any industrial unit ! Thus, not to provide 'Ghodiaghar' is on the face of it is an offence of very grave and serious nature, as it is quite linked up with welfare of the working women on the one hand and their minor children's on the other. In that view of the matter, breach of the relevant provisions of the Act by no stretch of imagination can be said to be trivial or technical to be hood-winked at to be taken lightly, more particularly when the offence alleged is a continuing offence in view of the provisions contained in section 102 (1) & (2) of the Act not complied with. Further still, the Legislature not satisfied by merely at recording the order of conviction and sentence for the alleged contravention of sections and Rules made thereunder has further cast statutory obligation upon the concerned court in the first instance, charging, activating it by engrafting section 102 in the Act, whereby in addition to awarding punishment, it has asked the court also to direct the respondent-factory to take some such much needed measures within the stipulated period of 30 days to remedy the matter in respect of which the offence was committed, and in the second instance, in event of committing default of non-complaince to impose special punishment provided in sub-section (2) of Section 102 of the Act. In this view of the matter, not to discharge the statutory obligation under sections 48 and 102 of the Act and the relevant Rules made thereunder to provide 'Ghodiaghar'; ex-facie demonstrates the exploitation of worst type of working women. Not only that, but once the respondent having been convicted and sentenced for the very same offence and given direction to comply with the statutory obligation, and yet failed to comply with the same, it clearly demonstrates dogged, determined defiance of employer to flout not only the law but even the order of the court as well, challenging the law and justice in otherwords "Rule of law" with a devilish design and the malicious hope that by some deceitful game of pleading guilty again, he will once again be able to manage to get away with some disposal-crazy, greedy court awarding the lighter sentence of fine amount which would indeed be far too less than what it would cost him to provide Creches as appears to have been done in the instant case !

6. In the present case, it is not possible to say with certainty as to what prompted the learned Magistrate to hasten up the proceedings by accepting the plea of guilty, of the person who had earlier also pleading guilty and was let-off with the trivial sentence of fine ! but believe it or not sometime unnecessary 'greed and craze for the disposal of cases' also is such a dangling,

tantalizing, tempting vice, where many unwary Magistrates though ought not and to yet in the inadvertent weaker moments walk into the trap of passing quite perverse, unjust, illegal, ridiculous order of sentences !! This is required to be taken extreme care and serious note of !! Trial Courts ought to know that pending cases are not perishable commodities or some such other scrap material which needs immediate disposal for much making auction sale of justice ! Over emphasizing disposals, fanning, motivating, unreasonable disposal craze, ultimately turns into psychocyclonic tendency in the Court which just to say the least is anti-justice !! It is true that Court must work efficiently but criteria or barometer of measuring efficiency is not blind rush of disposal of cases at any cost !! We must insist upon the instant and efficient disposal of cases but that should be quality and justice based !! If they are not such quality based disposals, the same should not be counted scoring in favour of the concerned learned Magistrate with a view just to deter and discourage illegal, unhealthy practice of immoral disposals. In fact, when the subordinate courts submit their respective monthly, quarterly as the case may be disposal reports, they should also be asked to supply in the first instance the nature and importance of the suit/application/appeals as the case may be; and in the second instance which case was disposed off in what particular manner that is to say whether - (i) by full dressed trial ? (ii) by compromise ? (iii) by pleading guilty ? (iv) dismiss for default, or (v) passing of an ex-parte decree ? (vi) how many witnesses and documents respectively came to be examined and exhibited ? (vii) in all for how many days case proceedings went on ? (viii) How manyu times the adjournments granted ?)ix) In how many cases, how many times adjournments granted ? why ? and whether any cost impost and awarded ? If on the basis of this material particular the Court decides the case on merit, at the end of full dressed trial, it must be accorded marks accordingly while for the rest of the cases, some marks be fixed and accordingly percentage be marked against the disposal of the cases. Further still, alongwith disposal of the cases, all courts should be asked (i) how many cases, how many times adjournment granted ? (ii) at whose instance; (iii) ho old that case was wherein adjournment was granted. This will immediately click, curtail the less tendency of granting adjournments.This is the only way to discourage the chronic and relapsing tendency of cheap disposals.

7. If the employer schemingly commits some such offences, though he should not, one can quite understand

and that does not matter much more particularly when as there are courts to take ultimate stock, care and control such things and situation on the complaints being filed before it, but at the sdame time,of whatis the most stunning and shocking is the fact where way in which the illicit 'plea of guilty' comes to be accepted by some of the learned Magistrates, as has happened in the instant case !! It is indeed too difficult to understand that despite sections 48 and 102 are manifestly clear, exhibiting deepest concern and anxiety on the part of the Legislature for the welfare of working women and their children, quite surprisingly, how indeed and on what basis the learned Magistrate could persuade himself to compromise with his judicial conscience in awarding paltry composite fine of Rs. 150/- only and that too in a repeated offence committed by the Manager of a big company like 'Milton Pvt. Limited' in a matter of inhuman breach of rules in not providing creches to women worker for their children for 210 days. Further still, yet one more factor which surprises this court most is that despite the directions of the trial court in earlier case to provide 'Ghodiaghar' within 30 days, the company like 'Milton Pvt. Ltd' which as informed carries on the large scale business of manufacturing and marketing wide range of garments etc. and employing more than 1000 women workers for the purpose came to be sentenced to pay a meagre fine of Rs. 150/= only viz. in total disregard to penal provision under section 102 of the Act ? This sort of things at times are simply difficult to conceive and imagine even and yet at the same time, sometimes, not that difficult to appreciate as to what indeed might have happened in between the accused pleading guilty and the learned Magistrate ignoring the gravity and seriousness of the offence awarding fleabite sentence of fine of Rs. 150/= only is not that difficult to visualize !! This is simply ridiculing the welfare legislation ignoring altogether the vital interest of women workers and their minor children. If we turn to the relevant section 102 (2) of the Act, the maximum sentence provided thereunder is six months' imprisonment or fine of Rs. 100/- per day from the date of non-compliance of the order, for every day, or both. Nodoubt, this section 102 (2) of the Act does vest some discretion in the learned Magistrate in matter of awarding either substantive sentence of imprisonment upto six months or fine upto Rs. 100/- per day from the date of non-compliance of the offence or both. But then in the instant case, the question is whether imposing a meagre and composite fine of Rs. 150/- only can be said to contain any grain of justification or judicial discretion worth the name ? Fine of Rs. 150/= only to the respondent factory is not

even an ant-bite to the elephant !! This is indeed nothing but making the labour legislation and its enforcement the laughing stock ! One can quite understand that in a given case despite directions given by the court to comply with the particular order within fixed time limit, the respondent for whatever reasons unable to comply with the same, commits an offence, but then in that case, while deciding the sentence aspect, the explanation rendered by the accused, if it is found to be genuine, just and reasonable, and satisfies the judicial conscience, then it can be safely accepted and the reasonable order of sentence can be passed (if statutory minimum sentence is not prescribed). But even in such type of cases also the learned Magistrate should invariably record the reasons which according to him satisfied him for taking the liberal view of the matter. No such reasons are given in the present case !! Now on perusal of the record, it is not disputed before this court that the respondent company is a big factory, spread over 7 to 8 sheds at 'Free Trade Zone, Kandla', Gandhidham. The said factory in as much as is found to have employed 1083 women workers and is obviously having sizeable turnover and profits, etc. etc. These facts on the face of it are quite tell-tale data clearly indicating that large scale production is being carried out in the said factory with obvious motive of earning huge profits. It also further appears from the record which is not disputed by the otherside that previously also respondent-company on pleading guilty was convicted and sentenced for the very same offence wherein flimsy fine of Rs. 150/- only was imposed, with the further direction to comply with the statutory requirements within 30 days, which it has not complied with. At this stage, the learned APP on the basis of the certified copy (not disputed) has also pointed out that the respondent was also prosecuted for the alleged offence punishable under section 40 (b) of the Act for not keeping Safety Officer, wherein also, on his pleading guilty, he came to be convicted and sentenced to pay a fine of Rs. 250/= and in default to undergo SI for 10 days, by an order dated 10-4-1985. Of course, at this time, the learned Magistrate was Shri A.J Brahmbhatt and not Mr. J.R Savani. Thus, it appears from past record of the Company that the respondent-accused when caught, committing some offences was in habit of pleading guilty when tried and the learned Magistrate also in his turn was in habit of treating the offences under Labour Legislation as quite trivial and accordingly to impose a fleabite sentence had become a customary for them ! This court has also come across number of such cases wherein for the alleged offences under the Factory Act, 1948 or other labour

legislations by some convenient short-circuit, unjust, illegal and immoral practice of 'plead guilty',accused get away with the lighter sentence of TRC and some paltry amount of fine as if it was the 'customary tradition'between the accused and the court ! This is too unfortunate and illegal to be lightly countenanced !! It appears that despite huge earnings and for the previous default though the respondent was convicted and sentenced and directed to comply with the requirements of section 48 and 102 of the Act, it appears that he has thought it more profitable to plead guilty and ultimately get let off with lighter sentence than to provide 'Creches' which will obviously cost quite sizeable amount. Now it is really strange, disturbing and rather too shocking to notice that despite clear cut provisions under section 102 (2) of the Act, the learned Magistrate ignoring the gravity and seriousness of the offence, in as much as the inconveniences, hardships and agonies of the working women and their children, had thought it proper to take quite an unjust and unwarranted charitable view of the matter towards the employer in clear disregard of the statutory mandate !! It is perhaps here because of such unbecoming conduct on the part of the learned Magistrates that the adage appears to have gained currency viz. " the law governs the poor, and the rich and otherwise influential governs the law "thereby maligning and bringing about the entire administration of justice into gross disrepute ! Can such double standard of justice one for the rich and influential and other for the poor, fit in with the image of a Judge styling himself as 'doing justice' ? Unfortunately,if the above adage indicating double standard of justice gets entered, centered and rooted in the mind of people, that indeed will be the bleakest day for the Administration of Justice as the people are bound to loose their respect and faith in the 'Rule of Law' and "Constitution" and "Administration of Justice". If indeed that happens result would be anarchy. The might will become mighty ushering in the rule of jungle.

8. Further here, still one more important thing is required to be taken note of viz., particular Act is a "sort of will or trust" created by the Legislature for its beneficiaries namely people or some section of the people of the country where the law enforcing agencies viz., like Executive and Judiciary are appointed as "trustees" of the Act. Accordingly, neither executive nor judiciary is permitted to act in a manner contrary, derogatory or prejudicial to the interest of beneficiary viz., people. To appreciate, interpret and enforce any

law more particularly the social and labour welfare legislation, the Court must have committed humanistic, socialist approach, concern for the person for whom the Act is enacted and zeal and zest to drive home the goal set by the legislature. It is for this reason that every court before exercising its discretion must try to see that it does not expose itself and in the process also the whole system of 'Rule of Law' and the 'Administration of Justice' to the rough and ready allegation of double standard viz. one for the rich and influential and other for the poor, in order to uphold and sustain the ultimate faith of people at large in the Administration of Justice and the Rule of Law. Thus, in the background of the aforesaid facts and circumstances and the clear legal position of the instant case, what is surprising is the fact as to how the learned Magistrate in total disregard to section 102 (2) of the Act could have inflicted the flimsy sentence of lumpsum fine of Rs. 150/- only !! It is quite true that the discretionary process and in particular the sentencing process many a times is little hard and testing and at times quite difficult also to exercise, more particularly where the statute has not prescribed the minimum sentence. Accordingly, before imposing, fixing the suitable period of imprisonment and/or amount of fine, court whenever it is befaced with the situation where the judicial discretion is called upon to be exercised to do the real and substantial justice, it must ask its conscience the questions such as (1) What is the gravity and seriousness of the offence ? (2) what indeed is the underlying object of the Act ? and particular section which came to be violated ? (3) what will be impact, that is to say, what will be the public reaction if it takes liberal view of the matter ? (4) to what extent the interest of concerned class for whom the particular Act came to be enacted would stand damaged ? (5) to what extent will it encourage or deter the accused in the case at hand and for that purpose any other offenders possessing similar modus-operandi to commit the alleged crime ?? (6) whether by exercising discretion in a particular manner, the respect for the law and administration of justice would be undermined or enhanced ? (7) in case the respondent-accused pleads guilty, whether such plea is an honest plea or just a dust-in-eye attempt to deceive the court to get away with the lighter sentence ? (8) whether despite such plea of guilty, the same should be entertained at all or not because it is certainly discretionary and not at all obligatory upon the court to entertain and accept the plea of guilty in every cases ? (9) whether exercise of discretion in a particular manner will dig at the very roots of the image of the public administration and/or

the system of the 'Rule of Law' in the country ? Infact this enlightened path to exercise judicial discretion should be present to the mind of each and every court while imposing the sentence. It is true that section 102 (2) of the Act does vest some discretion in the trial court in the matter of awarding either substantive sentence of imprisonment upto six months and/or fine maximum upto Rs. 100/- per day from the date of non-compliance of the order or both. Therefore the court may, depending upon the facts and circumstances of a given case, either exercise its discretion by sending the respondent-accused to jail and, or it may as well in the alternative inflict fine only. In this view of the matter, in the instant case, merely because the substantive sentence of imprisonment is not awarded, may be to that extent, the court has exercised its discretion, but when it comes to the question of fine of Rs. 150/= only, it is very clear that the learned Magistrate has been quite indiscreet while exercising the said discretion in the matter of imposing fine. Infact, in such cases where the court is befaced as to what would be the proper sentence of fine (if minimum is not prescribed in the statute) it should take into consideration the overall financial capability of the accused and determine the just and proper amount of it accordingly. Now while deciding the financial capability of the accused Manager/owner (as the case may be) of any industrial unit in cases under the Labour Legislation, the court shall inquire (1) what is the size of the factory ? (2) how many workers are employed ? (3) what is the annual turn-over as per the balance-sheet ? (4) whether the accused has previously committed offence under the Factory Act or any other Labour Legislation etc.? (5) whether he had pleaded guilty ? and it was accepted ?? (6) If plea of guilty was accepted what was the fine imposed ? (7) For this purpose, the court must ask for the expenditure account-book, the Sales Tax, and the Income Tax Returns to be produced before it, and ask the accused to produce it on affidavit along with relevant annexure. This way of screening and testing the financial aspects and the antecedents of the respondent-accused will greatly assist and facilitate the court in properly assessing and ultimately correctly determining the substantive sentence of imprisonment and amount of fine to be imposed.

9. Duty of the court even when accused pleads guilty (in case where the statutory minimum sentence is not provided) :- In view of the aforesaid discussion discussion, even in the cases wherein the accused pleads guilty, the learned Magistrate should not

mechanically accept the same and pass any order abandoning the above guidelines without calling upon the Factory Inspector and the concerned accused to satisfy him on the above points, if the same is not otherwise available on the record.

10. At this juncture, Mr.Punj, the learned advocate for the respondent subitted that after the alleged offence, as many as more than 11 years have passed, and accordingly, in that view of the matter, the case having become quite stale this court should not interfere with the impugned order of sentence. In the alternative, Mr.Punj further submitted if it is not inclined to accept his submission, then in that case, should not impose the maximum fine of Rs.100/= for 210 days of non-compliance as suggested by the learned APP. Mr.Punj further

submitted that according to his client, the default was of only 133 days to be counted from 21-9-1985 when the Factory Inspector visited the factory. Taking serious objection to this submission, the learned APP submitted that the respondent can not be permitted to improve upon his case of pleading guilty and urge anything more at this stage. If at all he wanted to say anything in this regard, he certainly would not have failed to say so at the earliest at the time of pleading guilty before the learned Magistrate by producing some convincing material showing that he has complied with the order of the court. Now that is not produced before this court even. In this view of the matter, the learned APP is quite right when he submitted that the order of non-compliance should be computed from 11-5-1985 to 7-12-1985 the date on which the complaint came to be filed totaling 210 days. Having regard to the facts and circumstances of this case available on the record it is very clear that the further plea rather bald and convenient assertion of default of 133 days only is clearly an after-thought and accordingly, respondent is liable to pay a fine for non-compliance of the earlier order passed by the learned Magistrate for 210 days.

10.1 Having determined the default of non-compliance, for 210 days the next important question is what ought to be the just and proper order of sentence ? The Legislature has vested a discretion in the court to award a fine upto Rs. 100/- for each day of default of non-compliance over and above the substantive sentence of imprisonment upto 6 months. Accordingly, the pertinent question would be whether the respondent accused should also be made to suffer the imprisonment in jail for some period over and above the imposition of examplory fine ?

Now the Factory Act came to be enacted in the year 1948 and thereafter about 48 years have been passed, and it appears that it has failed to click/make any desired, deterrent effect upon the offending employers/Managers under the Act as could be found from number of cases every day filed before the Courts wherein on accused on pleading guilty, he is shamelessly and ridiculously punished till rising of the court and with some token amount of fine !! In this view of the matter, with a view to deter the offenders from repeating such offences, exploiting the workers, it is high time that the court takes a stricter view of the matter by imposing substantive sentence of imprisonment also and lesson teaching fine. Not to interpret and enforce the social welfare legislation in its proper perspective as has been done in the instant case, is no less a serious matter than the employers committing offences under the Labour Laws !! When, under the circumstances, the Legislature imposes certain duties on the court, and the Factory Inspector, not only offenders under the Act, but these law enforcing agencies also are equally answerable first to their conscience, next to the Legislature, thereafter to the Departmental head, and last but not the least ultimately to the higher courts !! Where after calling for the explanation appropriate departmental action should be taken against them. To hoodwink serious dereliction of duty, digracing the statute by the concerned learned Judge or a Magistrate is too serious a thing to be countenanced lightly. Thge learned Magistrate s are working at the grass-root level of the 'Administration of Justice'. Accordingly, they are in live-touch and contact of the people. The good or bad experience of the concerned learned Magistrate or the Judge will instant reflection upon the overall credibility and the integrity of the 'Administration of Justice'. Accordingly, it is the duty in the first instance of the learned District and Sessions Judges and thereafter of the High Court to have control over the situation by some immurate much needed exam....activities. None can claim the privilege of being above law as justice is a matter of absolute accountability even for the Courts !!

10.3 In above view of the matter, this court, sitting as a Magistrate would have surely taken quite stricter view of the matter by imposing a substantive sentence of imprisonment also for some days or months but still however, in view of the fact that 11 years have already passed in between, in overall facts and circumstances of the case this Court thinks it quite fit to restrain itself from imposing the substantive sentence of

imprisonment. Therefore the only question that remains now for consideration is as to what extent the amount of fine needs to be enhanced !!? The learned Magistrate for the default of 210 days has imposed a composite fine of Rs. 150/= only, as if there was non-compliance for two days only !! This, undoubtedly requires to be raised. According to the learned APP in order to set a striking example, the court must impose the maximum provided under the Act. The learned APP undoubtedly is right to some extent and accordingly his plea for imposing a fine of Rs. 100/= would have been accepted. But then this appears to be a first type of the case before this court, and the ends of justice would quite meet if the accused is directed to pay Rs. 50/- for each one of 210 days of the non-compliance of the earlier order, which will total amount to Rs. 10,500/-. We make it clear that merely because this court has awarded Rs. 50/= that does not necessarily mean that the learned Magistrate are not empowered to impose the maximum fine of Rs. 100/= in the facts and circumstances of that particular case before him when such cases come before him ! In a gross case, he can impose both the substantive sentence of imprisonment and maximum fine of Rs. 100/= to teach offending employer-Manager life's lesson nay to be careless, negligent in workers matter by committing some such offences under the labour laws.

10. Incidentally, it will not be out of place to draw the attention of chair person, Law Commission, New Delhi to the fact the amount of fine provided in various penal provision under the Factory Act, 1948 and for that purpose various other labour welfare and other social welfare legislations, requires to be revised and substantially enhanced !! After the Factory Act came to be enacted in the year 1948, during last five decades the inflationary trend has devalued the rupees to quite great extent. In otherwords, price index has gone up 15 to 20 times higher perhaps more than what it was in the year 1948. In this view of the matter, penalty amount by way of fine requires to be substantially revised keeping pace with ratio of the devaluation of rupee to meet with the ends of justice. Legislation to command respect must have a penal provision which has a deterrent effect to control accused to solute the letter, spirit interest and object of the Act.

11. In the result, this appeal for enhancement of the sentence is allowed. The impugned order of sentence of fine of Rs. 150/- only is quashed and set aside and accordingly in its place the accused is imposed Rs. 50/= per day for each one of 210 days of his default of

non-compliance under section 102 (2) of the Factories Act, 1948, and in default, to undergo SI for one month. This being an offence committed by the company viz. 'Milton Pvt. Ltd.' the ultimate liability of paying the fine amount of Rs. 10,500/= is declared to be of a Company which shall deposit the same before the learned Magistrate within 1 1/2 months from the date of receipt of this judgment. The office is directed to immediately forward a copy of this judgment to the respondent or his successor in the office. The learned Magistrate shall forward a compliance of paying up of fine at the earliest to this Court.

12. The office is directed to forward a copy of this judgment and order to the (1) Secretary, Labour Department, Sachivalaya, Gandhinagar with a direction to circulate a copy of this judgment to all the Factory Inspectors of the State; impressing upon them to quote and cite this judgment in all complaints under the Factory Act so that inadvertantly even, in absence of the complainant, -accused pleading guilty, does not escape with flee-bite sentence ridiculating the labour justice !! The Secretary, Labour Department be also impressed upon to inform this Court the compliance of this direction on or before 31st March, 1997. (2) Secretary, Legal Department, Gandhinagar; (3) Director, Judicial Academy, Ahmedabad; (4) Chair-person, Law Commission, New Delhi.

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Joshi/Pt*